

HOUSE BILL NO. 642

INTRODUCED BY GOLIE, VILLA, PARKER, ROUSH, MANGAN, KEANE, LARSON, GALVIN-HALCRO,
SCHMIDT, TROPILA, LINDEEN, WILSON, TESTER, WISEMAN, CALLAHAN, EATON, GILLAN, NOONAN

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO ELECTRICITY DEFAULT SUPPLY
AND LOCAL GOVERNMENT AUTHORITY; AUTHORIZING LOCAL ELECTRICITY SUPPLY ENTITIES;
CLARIFYING THAT A LOCAL ELECTRICITY SUPPLY ENTITY IS NOT A REGULATED PUBLIC UTILITY;
CLARIFYING THE AUTHORITY OF MUNICIPAL UTILITIES; CLARIFYING THAT THE TERM "DEFAULT
SUPPLIER" INCLUDES A LOCAL ELECTRICITY SUPPLY ENTITY DESIGNATED BY THE PUBLIC SERVICE
COMMISSION AS A DEFAULT SUPPLIER; DEFINING AND CLARIFYING CERTAIN TERMS; REVISING THE
TRANSITION TO CUSTOMER CHOICE PROVISIONS THAT RELATE TO DEFAULT SUPPLY; ~~REQUIRING~~
~~A PUBLIC UTILITY'S DISTRIBUTION SERVICES PROVIDER TO PROVIDE BILLING SERVICES FOR THE~~
~~CUSTOMERS OF A LOCAL ELECTRICITY SUPPLY ENTITY THAT HAS BEEN DESIGNATED AS A DEFAULT~~
~~SUPPLIER;~~ REQUIRING A LOCAL ELECTRICITY SUPPLY ENTITY TO COMPENSATE THE PUBLIC
UTILITY'S DISTRIBUTION SERVICES PROVIDER FOR BILLING SERVICES; REQUIRING THAT ANY
TRANSITION CHARGE OR UNIVERSAL SYSTEM BENEFITS CHARGE CONTINUES TO BE PAID BY A
LOCAL ELECTRICITY SUPPLY ENTITY CUSTOMER; EXEMPTING A LOCAL ELECTRICITY SUPPLY ENTITY
FROM CERTAIN PROVISIONS OF THE ELECTRIC UTILITY INDUSTRY RESTRUCTURING AND CUSTOMER
CHOICE ACT; REQUIRING THE COMMISSION TO DESIGNATE A LOCAL ELECTRICITY SUPPLY ENTITY
AS A DEFAULT SUPPLIER IF CERTAIN CONDITIONS ARE MET; PROVIDING A LOCAL ELECTRICITY
SUPPLY ENTITY WITH CERTAIN POWERS; CLARIFYING A LOCAL ELECTRICITY SUPPLY ENTITY'S
BONDING AUTHORITY; AMENDING SECTIONS 69-3-101, 69-7-101, 69-8-103, 69-8-201, 69-8-208, 69-8-210,
69-8-403, 69-8-419, 69-8-420, AND 69-8-421, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 69-3-101, MCA, is amended to read:

"69-3-101. Meaning of term "public utility". (1) The term "public utility", ~~within the meaning of~~ for the
purposes of this chapter, ~~shall embrace~~ means every corporation, both public and private, company, individual,
or association of individuals, as well as their lessees, trustees, or receivers appointed by any court ~~whatsoever~~,

1 ~~that now or hereafter may own, operate, or control~~ owns, operates, or controls any plant or equipment, any part
2 of a plant or equipment, or any water right within the state for the production, delivery, or furnishing for or to other
3 persons, firms, associations, or corporations, private or municipal:

4 (a) heat;

5 (b) street-railway service;

6 (c) light;

7 (d) power in any form or by any agency;

8 (e) except as provided in chapter 7, water for business, manufacturing, household use, or sewerage
9 service, whether within the limits of municipalities, towns, and villages or elsewhere;

10 (f) regulated telecommunications service.

11 (2) The term "public utility" does not include:

12 (a) privately owned and operated water, sewer, or combination systems that do not serve the public;

13 (b) county or consolidated city and county water or sewer districts as defined in Title 7, chapter 13, parts
14 22 and 23; ~~or~~

15 (c) a person exempted from regulation as a public utility as provided in 69-3-111; or

16 (d) a local electricity supply entity defined in 69-8-103."
17

18 **Section 2.** Section 69-7-101, MCA, is amended to read:

19 **"69-7-101. Municipal utilities -- regulation by municipality.** A municipality has the power and
20 authority to regulate, establish, and change, as it considers proper, rates, charges, and classifications imposed
21 for utility services, including default supply services, as defined in 69-8-103, to its inhabitants and other persons
22 served by municipal utility systems. Rates, charges, and classifications must be reasonable and just."
23

24 **Section 3.** Section 69-8-103, MCA, is amended to read:

25 **"69-8-103. Definitions.** As used in this chapter, unless the context requires otherwise, the following
26 definitions apply:

27 (1) "Aggregator" or "market aggregator" means an entity, licensed by the commission, that aggregates
28 retail customers, purchases electrical energy, and takes title to electrical energy as an intermediary for sale to
29 retail customers.

30 (2) "Assignee" means any entity, including a corporation, partnership, board, trust, or financing vehicle,

1 to which a utility assigns, sells, or transfers, other than as security, all or a portion of the utility's interest in or right
2 to transition property. The term also includes an entity, corporation, public authority, partnership, trust, or
3 financing vehicle to which an assignee assigns, sells, or transfers, other than as security, the assignee's interest
4 in or right to transition property.

5 (3) "Board" means the board of investments created by 2-15-1808.

6 (4) "Broker" or "marketer" means an entity, licensed by the commission, that acts as an agent or
7 intermediary in the sale and purchase of electrical energy but that does not take title to electrical energy.

8 (5) "Cooperative utility" means:

9 (a) a utility qualifying as an electric cooperative pursuant to Title 35, chapter 18; or

10 (b) an existing municipal electric utility as of May 2, 1997.

11 (6) "Customer" or "consumer" means a retail electric customer or consumer. The university of Montana,
12 pursuant to 20-25-201(1), and Montana state university, pursuant to 20-25-201(2), are each considered a single
13 retail electric customer or consumer with a single individual load.

14 (7) "Customer-generator" means a user of a net metering system.

15 (8) "Default supplier" means:

16 (a) a distribution services provider of a utility that has restructured in accordance with this chapter; or

17 (b) a local electricity supply entity designated by the commission as a default supplier under [section 11].

18 (9) "Default supply service" means the provision of electricity supply by a default supplier.

19 (10) "Distribution facilities" means those facilities by and through which electricity is received from a
20 transmission services provider and distributed to the customer and that are controlled or operated by a
21 distribution services provider.

22 (11) "Distribution services provider" means a utility owning distribution facilities for distribution of
23 electricity to the public.

24 (12) (a) "Electricity supplier" means any person, including aggregators, market aggregators, brokers,
25 and marketers, offering to sell electricity to retail customers in the state of Montana.

26 (b) The term does not include a local electricity supply entity.

27 (13) "Electricity supply costs" means the actual costs of providing default supply service, including but
28 not limited to:

29 (a) capacity costs;

30 (b) energy costs;

1 (c) fuel costs;
2 (d) ancillary service costs;
3 (e) demand-side management and energy efficiency costs;
4 (f) transmission costs, including congestion and losses;
5 (g) billing costs;
6 (h) planning and administrative costs; and
7 (i) any other costs directly related to the purchase of electricity, management of default electricity supply
8 costs, and provision of default supply and related services.

9 (14) "Financing order" means an order of the commission adopted in accordance with 69-8-503 that
10 authorizes the imposition and collection of fixed transition amounts and the issuance of transition bonds.

11 (15) (a) "Fixed transition amounts" means those nonbypassable rates or charges, including but not
12 limited to:

13 (i) distribution;
14 (ii) connection;
15 (iii) disconnection; and
16 (iv) termination rates and charges that are authorized by the commission in a financing order to permit
17 recovery of transition costs and the costs of recovering, reimbursing, financing, or refinancing the transition costs
18 and of acquiring transition property through a plan approved by the commission in the financing order, including
19 the costs of issuing, servicing, and retiring transition bonds.

20 (b) If requested by the utility in the utility's application for a financing order, fixed transition amounts must
21 include nonbypassable rates or charges to recover federal and state taxes in which the transition cost recovery
22 period is modified by the transactions approved in the financing order.

23 (16) "Functionally separate" means a utility's separation of the utility's electricity supply, transmission,
24 distribution, and unregulated retail energy services assets and operations.

25 (17) "GENERATION FACILITIES" MEANS ANY COMBINATION OF A GENERATOR OR GENERATORS AND OTHER
26 ASSOCIATED MACHINERY AND EQUIPMENT THAT ARE NORMALLY OPERATED TO PRODUCE ELECTRICITY, INCLUDING
27 ASSOCIATED TRANSMISSION FACILITIES NECESSARY TO INTERCONNECT WITH THE TRANSMISSION GRID.

28 ~~(17)~~(18) "Interested person" means a retail electricity customer, the consumer counsel established in
29 5-15-201, the commission, or a utility.

30 ~~(18)~~(19) "Large customer" means, for universal system benefits programs purposes, a customer with

1 an individual load greater than a monthly average of 1,000 kilowatt demand in the previous calendar year for
2 that individual load.

3 ~~(19)(20)~~ "Local electricity supply entity" means an entity ~~established by a consolidated city-county, a~~
4 ~~county, or an incorporated city or town that provides default supply services within its service territory~~ THAT IS:

5 (A) ESTABLISHED AND REGULATED BY A LOCAL GOVERNMENT UNIT WITH SELF-GOVERNMENT POWERS THAT HAS
6 ACQUIRED BY OWNERSHIP OR LEASE AN INTEREST IN A GENERATION FACILITY WITH AT LEAST 65 MEGAWATTS OF CAPACITY
7 FOR THE PURPOSE OF PROVIDING DEFAULT SUPPLY SERVICE WITHIN ITS JURISDICTIONAL LIMITS; AND

8 (B) A MEMBER OF A RURAL COOPERATIVE UTILITY THAT:

9 (i) HAS RECEIVED ALL GOVERNMENTAL PERMITS AND AUTHORIZATIONS NECESSARY TO LEGALLY COMMENCE
10 CONSTRUCTION OF A GENERATION FACILITY, INCLUDING RESOLUTION OF ALL LEGAL CHALLENGES TO THE PERMITS, AND
11 THAT HAS PRUDENTLY COMMENCED THE CONSTRUCTION OF THE GENERATION FACILITY; OR

12 (ii) OWNS OR OPERATES GENERATION FACILITIES WITH AT LEAST 65 MEGAWATTS OF CAPACITY IN THE STATE OF
13 MONTANA.

14 ~~(19)(20)(21)~~ "Local governing body" means a local board of trustees of a rural electric cooperative.

15 ~~(20)(21)(22)~~ "Low-income customer" means those energy consumer households and families with
16 incomes at or below industry-recognized levels that qualify those consumers for low-income energy-related
17 assistance.

18 ~~(21)(22)(23)~~ "Net metering" means measuring the difference between the electricity distributed to and
19 the electricity generated by a customer-generator that is fed back to the distribution system during the applicable
20 billing period.

21 ~~(22)(23)(24)~~ "Net metering system" means a facility for the production of electrical energy that:

22 (a) uses as its fuel solar, wind, or hydropower;

23 (b) has a generating capacity of not more than 50 kilowatts;

24 (c) is located on the customer-generator's premises;

25 (d) operates in parallel with the distribution services provider's distribution facilities; and

26 (e) is intended primarily to offset part or all of the customer-generator's requirements for electricity.

27 ~~(23)(24)(25)~~ "Nonbypassable rates or charges" means rates or charges that are approved by the
28 commission and imposed on a customer to pay the customer's share of transition costs or universal system
29 benefits programs costs even if the customer has physically bypassed either the utility's transmission or
30 distribution facilities.

1 ~~(24)(25)(26)~~ "Pilot program" means an experimental program using a select set of small customers to
2 assess the potential for developing and offering customer choice of electricity supply to small customers in the
3 future.

4 ~~(25)(26)(27)~~ "Public utility" means any electric utility regulated by the commission pursuant to Title 69,
5 chapter 3, on May 2, 1997, including the public utility's successors or assignees.

6 ~~(26)(27)(28)~~ "Qualifying load" means, for payments and credits associated with universal system benefits
7 programs, all nonresidential demand-metered accounts of a large customer within the utility's service territory
8 in which the customer qualifies as a large customer.

9 ~~(28) "Service territory" means the area that a consolidated city-county, a county, or an incorporated city~~
10 ~~or town under its existing jurisdictional authority may provide with typical community services.~~

11 ~~(27)(29)~~ "Small customer" means a residential customer or a commercial customer who has an
12 individual account with an average monthly demand in the previous calendar year of less than 50 kilowatts or
13 a new residential or commercial customer with an estimated average monthly demand of less than 50 kilowatts
14 of a public utility that has restructured pursuant to Title 35, chapter 19, or this chapter.

15 ~~(28)(30)~~ "Transition bondholder" means a holder of transition bonds, including trustees, collateral agents,
16 and other entities acting for the benefit of that bondholder.

17 ~~(29)(31)~~ "Transition bonds" means any bond, debenture, note, interim certificate, collateral, trust
18 certificate, or other evidence of indebtedness or ownership issued by the board or other transition bonds issuer
19 that is secured by or payable from fixed transition amounts or transition property. Proceeds from transition bonds
20 must be used to recover, reimburse, finance, or refinance transition costs and to acquire transition property.

21 ~~(30)(32)~~ "Transition charge" means a nonbypassable rate or charge to be imposed on a customer to pay
22 the customer's share of transition costs.

23 ~~(34)(33)~~ "Transition cost recovery period" means the period beginning on July 1, 1998, and ending when
24 a utility customer does not have any liability for payment of transition costs.

25 ~~(32)(34)~~ "Transition costs" means:

26 (a) a public utility's net verifiable generation-related and electricity supply costs, including costs of
27 capital, that become unrecoverable as a result of the implementation of this chapter or of federal law requiring
28 retail open access or customer choice;

29 (b) those costs that include but are not limited to:

30 (i) regulatory assets and deferred charges that exist because of current regulatory practices and can

1 be accounted for up to the effective date of the commission's final order regarding a public utility's transition plan
2 and conservation investments made prior to universal system benefits charge implementation;

3 (ii) nonutility and utility power purchase contracts executed before May 2, 1997, including qualifying
4 facility contracts;

5 (iii) existing generation investments and supply commitments or other obligations incurred before May
6 2, 1997, and costs arising from these investments and commitments;

7 (iv) the costs associated with renegotiation or buyout of the existing nonutility and utility power purchase
8 contracts, including qualifying facilities and all costs, expenses, and reasonable fees related to issuing transition
9 bonds; and

10 (v) the costs of refinancing and retiring of debt or equity capital of the public utility and associated
11 federal and state tax liabilities or other utility costs for which the use of transition bonds would benefit customers.

12 ~~(33)~~(35) "Transition period" means the period ending July 1, 2027.

13 ~~(34)~~(36) "Transition property" means the property right created by a financing order, including without
14 limitation the right, title, and interest of a utility, assignee, or other issuer of transition bonds to all revenue,
15 collections, claims, payments, money, or proceeds of or arising from or constituting fixed transition amounts that
16 are the subject of a financing order, including those nonbypassable rates and other charges and fixed transition
17 amounts that are authorized by the commission in the financing order to recover transition costs and the costs
18 of recovering, reimbursing, financing, or refinancing the transition costs and acquiring transition property,
19 including the costs of issuing, servicing, and retiring transition bonds. Any right that a utility has in the transition
20 property before the utility's sale or transfer or any other right created under this section or created in the financing
21 order and assignable under this chapter or assignable pursuant to a financing order is only a contract right.

22 ~~(35)~~(37) "Transmission facilities" means those facilities that are used to provide transmission services
23 as determined by the federal energy regulatory commission and the commission.

24 ~~(36)~~(38) "Transmission services provider" means an entity controlling or operating transmission facilities.

25 ~~(37)~~(39) "Universal system benefits charge" means a nonbypassable rate or charge to be imposed on
26 a customer to pay the customer's share of universal system benefits programs costs.

27 ~~(38)~~(40) "Universal system benefits programs" means public purpose programs for:

28 (a) cost-effective local energy conservation;

29 (b) low-income customer weatherization;

30 (c) renewable resource projects and applications, including those that capture unique social and energy

1 system benefits or that provide transmission and distribution system benefits;

2 (d) research and development programs related to energy conservation and renewables;

3 (e) market transformation designed to encourage competitive markets for public purpose programs; and

4 (f) low-income energy assistance.

5 ~~(39)(41)~~ (a) "Utility" means any public utility or cooperative utility.

6 (b) The term does not include a local electricity supply entity."

7
8 **Section 4.** Section 69-8-201, MCA, is amended to read:

9 **"69-8-201. Public utility -- transition to customer choice -- options and requirements -- waiver.**

10 (1) ~~Before~~ Except as provided in [section 11], before July 1, 2027, all public utility customers of a public utility
11 that has restructured in accordance with this chapter must have the opportunity to choose an electricity supplier
12 other than the default supplier.

13 (2) (a) ~~A~~ Except as provided in [section 11], a small customer of a public utility that has restructured in
14 accordance with this chapter:

15 (i) must receive default supply services from the default supplier as provided in this chapter; and

16 (ii) may purchase electricity supply services through a commission-approved small customer electricity
17 supply program as provided in this section.

18 (b) A small customer receiving electricity from a licensed supplier prior to July 1, 2003, may continue
19 to receive electricity supply from a supplier other than the default supplier.

20 (c) Customers that represent separately metered services with an estimated average monthly demand
21 of less than 50 kilowatts related to the same individual customer referred to in subsection (3) or (4) may be
22 combined with the respective eligible customer load or loads.

23 (3) (a) ~~Subject~~ Except as provided in [section 11] and subject SUBJECT to subsection (3)(b) of this
24 section, a customer of a public utility that has restructured in accordance with this chapter and that has an
25 individual load with an average monthly demand of less than 5,000 kilowatts but greater than or equal to 50
26 kilowatts may choose an electricity supplier.

27 (b) The total average monthly billing demand for all customers that choose an electricity supplier
28 pursuant to subsection (3)(a) in each calendar year may not exceed 20,000 kilowatts.

29 (c) A customer referred to in subsection (3)(a) receiving electricity from a licensed supplier prior to July
30 1, 2003, may continue to receive electricity supply from a supplier other than the default supplier.

(4) (a) Except as provided in [section 11] and subsections (4)(b) through (4)(e) of this section, a customer of a utility that has restructured in accordance with this chapter and that has an individual load with an average monthly demand of greater than or equal to 5,000 kilowatts shall purchase its entire electricity supply from the competitive marketplace.

(b) A customer referred to in subsection (4)(a) that is receiving its electricity supply from the competitive marketplace may make a one-time election to enter into a permanent power supply contract with the default supplier for service on or after July 1, 2004. These contracts must include the applicable provisions established by the commission pursuant to subsection (5). This election must be submitted to the commission in writing no later than December 31, 2003.

(c) A new customer with an estimated average monthly demand of greater than or equal to 5,000 kilowatts may enter into a power supply contract with the default supplier in order to receive default supply service. The new customer's election of an electricity supplier must be submitted in writing to the commission at least 90 days before delivery of electricity. These contracts must include the applicable provisions established by the commission pursuant to subsection (5).

(d) A customer referred to in subsection (4)(a) that was receiving electricity from the default supplier on July 1, 2003, may continue to receive electricity from the default supplier.

(e) A customer referred to in subsection (4)(a) that is a public agency, as defined in 18-1-101, may enter into a power supply contract with the default supplier for default supply service for all or part of the public agency's load. These contracts must include the applicable provisions established by the commission pursuant to subsection (5).

(5) The commission shall adopt rules and establish rates and fees to enable customers to have reasonable opportunities to choose an electricity supplier or to receive default supply service in accordance with subsections (2) through (4), while providing protection for small customers from higher or more unstable default supply service rates than would otherwise result if these choices were not offered, INCLUDING CUSTOMERS THAT TRANSITION TO DEFAULT SUPPLY SERVICE FROM A LOCAL ELECTRICITY SUPPLY ENTITY.

(6) ~~An Except for small customers within the service territory of a local electricity supply entity that have not previously elected to receive service from an electricity supplier that is not a default supplier, an~~ electricity supplier licensed by the commission to offer electricity supply service to small customers may petition the commission for the opportunity to provide electricity to small customers. The total average monthly demand for all customers referred to in subsection (2)(a) in each calendar year that receive service from an electricity

supplier that is not the default supplier may not exceed 10,000 kilowatts. The commission shall ensure that electricity supply service provided pursuant to this subsection is consistent with the requirements in subsection (5) and the provision of default supply service pursuant to this chapter.

(7) Based on an analysis of the sources of costs of providing default supply service that is not provided by a local electricity supply entity, the commission may:

(a) establish different categories of default supply service customers to assist with the implementation of this section;

(b) allocate default supply costs; and

(c) develop default supply rates.

(8) (a) Except as provided in subsection (8)(b), a customer receiving default supply service may not resell the electricity.

(b) A default supplier may implement demand reduction programs that reward customers for reducing demand under terms established by the commission.

(9) (a) Except as provided in 69-5-101, 69-5-102, 69-5-104 through 69-5-112, and 69-8-402, a public utility currently doing business in Montana as part of a single integrated multistate operation, no portion of which lies within the basin of the Columbia River, may defer compliance with this chapter until a time that the public utility can reasonably implement customer choice in the state of the public utility's primary service territory.

(b) To the extent that a public utility described in subsection (9)(a) becomes the successor in interest of another public utility that has restructured in accordance with this chapter, it shall assume responsibility only for the applicable transition plan of the acquired public utility.

(10) Upon a request from a public utility with fewer than 50 customers, the commission shall waive compliance with the requirements of 69-8-104, 69-8-202 through 69-8-204, 69-8-208 through 69-8-211, 69-8-402, and this section."

Section 5. Section 69-8-208, MCA, is amended to read:

"69-8-208. Public utility -- distribution services. A public utility's distribution services provider shall:

(1) file tariffs that make distribution facilities available to all electricity suppliers, transmission services providers, and customers on a nondiscriminatory and comparable basis;

(2) build and maintain distribution facilities;

(3) provide default supply service, unless default supply service is provided by a local electricity supply

1 entity pursuant to [section 11]; and

2 (4) provide or contract for emergency electricity supply and related services."

3
4 **Section 6.** Section 69-8-210, MCA, is amended to read:

5 **"69-8-210. Public utilities -- electricity supply.** (1) ~~A~~ Except as provided in [section 11], a public
6 utility's distribution services provider shall provide default supply service.

7 (2) The commission shall establish an electricity cost recovery mechanism that allows a default supplier
8 ~~that is a public utility's distribution services provider~~ to fully recover prudently incurred electricity supply costs,
9 subject to the provisions of 69-8-419 and 69-8-420. The cost recovery mechanism must provide for prospective
10 rate adjustments for cost differences resulting from cost changes, load changes, and the time value of money
11 on the differences.

12 (3) The commission may direct a default supplier ~~that is a public utility's distribution services provider~~
13 to offer its customers multiple default supply service options if the commission determines that those options
14 are in the public interest and are consistent with the provisions of 69-8-104 and 69-8-201.

15 (4) Notwithstanding any service options that the commission may require pursuant to subsection (3),
16 a default supplier ~~that is a public utility's distribution services provider~~ shall offer its customers the option of
17 purchasing a product composed of or supporting power from certified environmentally preferred resources that
18 include but are not limited to wind, solar, geothermal, and biomass, subject to review and approval by the
19 commission. The commission shall ensure that these resources have been certified as meeting
20 industry-accepted standards.

21 (5) (a) Subject to subsection (5)(b), the commission shall, in reviewing the procurement of electricity
22 supply by the default supplier that is a public utility's distribution services provider, take into account the
23 statewide economic benefits that are associated with the electricity supply procurement for the default supply
24 stakeholders. The default supply stakeholders include the default supplier, customers of the default supplier,
25 and the public.

26 (b) The consideration of economic benefits is secondary to the consideration of the costs and benefits
27 to the consumer and other criteria established by law.

28 (6) If a public utility intends to be an electricity supplier through an unregulated division, then the public
29 utility must be licensed as an electricity supplier pursuant to 69-8-404.

30 ~~(7) (a) A public utility's distribution services provider that provides distribution services for customers~~

~~that are within the service territory of a local electricity supply entity that has been designated as a default supplier pursuant to [section 11] shall provide unbundled billing and collection for the default supply service provided by the local electricity supply entity on the bill statement regularly provided by the distribution services provider to its customers.~~

~~—— (b) Any transition charge pursuant to 69-8-211 and any universal system benefits charge pursuant to 69-8-402 that is ARE currently being paid by a public utility distribution services provider's customer that subsequently is designated as a local electricity supply entity customer pursuant to [section 11] must continue to be paid by that customer, ALONG WITH ANY NEW CHARGES ESTABLISHED BY THE COMMISSION PURSUANT TO 69-8-201(5).~~

~~—— (c) A local electricity supply entity shall compensate the distribution services provider for any incremental costs incurred to provide the billing services described in subsection (7)(a)."~~

Section 7. Section 69-8-403, MCA, is amended to read:

"69-8-403. Commission authority -- rulemaking authority. (1) ~~Beginning~~ EXCEPT AS PROVIDED IN [SECTION 11], BEGINNING on the effective date of a commission order regarding a public utility's transition plan, the commission shall regulate the public utility's retail transmission, distribution, and default supply services ~~that are not provided by a local electricity supply entity~~ within the state of Montana, as provided in this chapter.

(2) The commission shall license electricity suppliers and enforce licensing provisions pursuant to 69-8-404.

(3) The commission shall promulgate rules that identify the licensees and ensure that the offered electricity supply is provided as offered and is adequate in terms of quality, safety, and reliability.

(4) ~~The~~ Except for default supply services provided by a local electricity supply entity, the commission shall establish just and reasonable rates through established ratemaking principles for public utility default supply, distribution, and transmission services and shall regulate these services. The commission may approve rates and charges for those services based on alternative forms of ratemaking such as performance-based ratemaking, on a demonstration by the public utility that the alternative method complies with this chapter, and on the public utility's transition plan.

(5) The commission shall certify that a cooperative utility has adopted a transition plan that complies with this chapter. A cooperative utility's transition plan is considered certified 60 days after the cooperative utility files for certification.

(6) The commission shall promulgate rules that protect consumers, distribution services providers, and electricity suppliers from anticompetitive and abusive practices.

(7) (a) After July 1, 2010, the commission shall continuously monitor whether or not workable competition has developed for small customers.

(b) If the commission determines that workable competition has developed for small customers after July 1, 2010, the commission shall provide a report to the legislature that includes recommendations for legislative implementation of customer choice for small customers.

(8) In addition to promulgating rules expressly provided for in this chapter, the commission may promulgate any other rules necessary to carry out the provision of this chapter.

(9) This chapter does not give the commission the authority to:

(a) regulate cooperative utilities in any manner other than reviewing certification filings for compliance with this chapter; ~~or~~

(b) compel any change to a cooperative utility's certification filing made pursuant to this chapter; or

(c) except as provided in [section 11], regulate a local electricity supply entity."

Section 8. Section 69-8-419, MCA, is amended to read:

"69-8-419. Default supply resource planning and procurement -- duties of default supplier -- objectives -- commission rules. (1) ~~The~~ Except as provided in [section 11], a default supplier shall:

(a) plan for future default supply resource needs;

(b) manage a portfolio of default supply resources; and

(c) procure new default supply resources when needed.

(2) The default supplier shall pursue the following objectives in fulfilling its duties pursuant to subsection (1):

(a) provide adequate and reliable default supply services at the lowest long-term total cost;

(b) conduct an efficient default supply resource planning and procurement process that evaluates the full range of cost-effective electricity supply and demand-side management options;

(c) identify and cost-effectively manage and mitigate risks related to its obligation to provide default electricity supply service;

(d) use open, fair, and competitive procurement processes whenever possible; and

(e) provide default supply services at just and reasonable rates.

(3) By December 31, 2003, the commission shall adopt rules that guide the default supply resource planning and procurement processes used by the default supplier and facilitate the achievement of the objectives in subsection (2) by the default supplier. The rules must establish:

(a) goals, objectives, and guidelines that are consistent with the objectives in subsection (2) for:

(i) planning for future default supply resource needs;

(ii) managing the portfolio of default supply resources; and

(iii) procuring new default supply resources;

(b) standards for the evaluation by the commission of the reasonableness of a power supply purchase agreement proposed by the default supplier; and

(c) minimum filing requirements for an application by the default supplier for advanced approval of a proposed power supply purchase agreement."

Section 9. Section 69-8-420, MCA, is amended to read:

"69-8-420. Default supply resource procurement plans -- comment on plans. (1) ~~The~~ Except as provided in [section 11], the default supplier shall develop default supply resource procurement plans. The plans must be submitted to the commission at intervals determined in rules adopted by the commission pursuant to 69-8-419.

(2) A default supply resource procurement plan must demonstrate the default supplier's achievement of the objectives provided in 69-8-419 and compliance with the rules adopted pursuant to 69-8-419.

(3) The commission shall:

(a) review the default supply resource procurement plan;

(b) provide an opportunity to the public to comment on the plan; and

(c) issue written comments that identify:

(i) any concerns of the commission regarding the default supplier's compliance with the rules adopted pursuant to 69-8-419; and

(ii) ways to remedy any concerns."

Section 10. Section 69-8-421, MCA, is amended to read:

"69-8-421. Default supply filings -- commission processing and approval. (1) ~~A~~ Except as provided in [section 11], a default supplier may apply to the commission for advanced approval of a power supply

1 purchase agreement that is:

2 (a) not executed; or

3 (b) executed with a provision that allows termination of the agreement if the commission does not find
4 the agreement reasonable.

5 (2) (a) The commission shall issue an order on the default supplier's application for advanced approval
6 of a power supply purchase agreement in a timely manner as provided in this subsection (2).

7 (b) In establishing an administrative procedure for reviewing an application for advanced approval, the
8 commission shall consider any financing and market constraints and the due process rights of affected persons.

9 (c) Within 45 days of the default supplier's submission of an application for advanced approval, the
10 commission shall determine whether or not the application is adequate and in compliance with the commission's
11 minimum filing requirements. If the commission determines that the application is inadequate, it shall explain
12 how the filing fails to comply with the objectives in 69-8-419 and the rules adopted pursuant to 69-8-419.

13 (d) The commission shall issue an order within 180 days of receipt of an adequate application unless
14 it determines that extraordinary circumstances require additional time.

15 (e) To facilitate timely consideration of an application, the commission may initiate proceedings to
16 evaluate planning and procurement activities related to a potential resource procurement prior to the default
17 supplier's submission of an application for approval.

18 (3) (a) The commission may approve or deny, in whole or in part, an application for advanced approval
19 of a power supply purchase agreement.

20 (b) The commission may consider all relevant information known up to the time that the administrative
21 record in the proceeding is closed in the evaluation of an application for advanced approval of a power supply
22 purchase agreement.

23 (c) A commission order granting advanced approval of a power supply purchase agreement must
24 include the following findings:

25 (i) advanced approval of all or part of the agreement is in the public interest;

26 (ii) the agreement resulted from a reasonable effort by the default supplier to comply with the objectives
27 in 69-8-419 and the rules adopted pursuant to 69-8-419; and

28 (iii) the price, quantity, duration, and other contract terms directly related to the price, quantity, and
29 duration of the power supply purchase agreement are reasonable.

30 (d) The commission order may include other findings that the commission determines are necessary.

(e) A commission order that denies advanced approval must describe why the findings required in subsection (3)(c) could not be reached.

(4) Notwithstanding any provision of this chapter to the contrary, if the commission has issued an order containing the findings required under subsection (3)(c), the commission may not subsequently disallow the recovery of costs incurred under the agreement based on contrary findings.

(5) If a default supplier does not apply for advanced approval of a power supply purchase agreement, the commission shall consider the prudence of the default supplier's resource procurement actions in the context of a default supplier's cost recovery filing pursuant to 69-8-210 or in a separate proceeding. The commission's decisions in these proceedings must be based on facts that were known or should reasonably have been known by the default supplier at the time of its procurement decisions.

(6) Nothing limits the commission's ability to subsequently, in any future cost recovery proceeding, inquire into the manner in which the default supplier has managed a power supply purchase agreement as part of its overall portfolio. The commission may subsequently disallow default supply costs that result from the failure of a default supplier to reasonably administer power supply purchase agreements in the context of its overall default supply portfolio management and service obligations.

(7) The commission may engage independent consultants or advisory services to evaluate a utility's default supply resource procurement plans and proposed power supply purchase agreements. The consultants must have demonstrated knowledge and experience with electricity supply procurement and resource portfolio management, modeling, and risk management practices. The commission shall charge a fee to the default supplier to pay for the costs of consultants or advisory services. These costs are recoverable in default supply rates."

~~NEW SECTION. Section 11. Local electricity supply entity -- default supply service. (1) The commission shall designate a local electricity supply entity as the default supplier for certain customers within its service territory if it certifies to the commission that the local governing body has adopted a default supply plan that:~~

~~(a) provides a default supply education program for its customers; and~~

~~(b) ensures that the local electricity supply entity is capable of providing its customers with adequate and reliable default supply services.~~

~~(2) The commission shall designate a local electricity supply entity as a default supplier within 45 days~~

1 ~~after the local electricity supply entity has filed the certification with the commission under subsection (1):~~

2 ~~——— (3) A local electricity supply entity that has been designated as a default supplier pursuant to subsection~~
3 ~~(1) is exempt from the provisions of 69-8-419 through 69-8-421.~~

4 ~~——— (4) The commission shall retain jurisdiction over the local electricity supply entity to the extent necessary~~
5 ~~to ensure that small customers of another default supplier are not subject to higher or more unstable default~~
6 ~~supply service rates than would otherwise result if certain default supply customers had not been allocated to~~
7 ~~a local electricity supply entity under this section.~~

8 ~~——— (5) Upon designation by the commission that a local electricity supply entity is a default supplier, all~~
9 ~~customers within the local electricity supply entity's service territory:~~

10 ~~——— (a) that have an individual account with an average monthly demand in the previous calendar year of~~
11 ~~less than 50 kilowatts are assigned to the local electricity supply entity as default supply customers and must~~
12 ~~receive their electricity supply from the local electricity supply entity;~~

13 ~~——— (b) with an estimated average monthly demand of 50 kilowatts or greater but with an individual load less~~
14 ~~than a monthly average of 5,000 kilowatt demand in the previous calendar year for that individual load are~~
15 ~~assigned to the local electricity supply entity as default supply customers, except that these customers may,~~
16 ~~within 45 days of the date of designation, elect to receive their electricity supply from an electricity supplier other~~
17 ~~than the local electricity supply entity or from another default supplier. A customer who has elected to receive~~
18 ~~its electricity supply from the local electricity supply entity may receive service from that local electricity supply~~
19 ~~entity only upon its consent and upon approval by the commission in accordance with subsection (4).~~

20 ~~——— (c) with an individual load greater than a monthly average of 5,000 kilowatt demand in the previous~~
21 ~~calendar year for that individual load may receive their electricity supply from a local electricity supply entity at~~
22 ~~any time upon terms, conditions, and tariffs as established by the local electricity supply entity.~~

23
24 NEW SECTION. SECTION 11. LOCAL ELECTRICITY SUPPLY ENTITY -- DEFAULT SUPPLY SERVICE. (1) ON OR
25 BEFORE JULY 1, 2007, A LOCAL ELECTRICITY SUPPLY ENTITY THAT HAS ADOPTED A PLAN FOR THE TRANSITION OF AND
26 SERVICE TO THE DEFAULT SUPPLY CUSTOMERS OF A PUBLIC UTILITY OF THE LOCAL ELECTRICITY SUPPLY ENTITY MAY FILE
27 WITH THE COMMISSION A PETITION THAT DEMONSTRATES THAT THE TRANSITION OF THE DEFAULT SUPPLY CUSTOMERS
28 OF A PUBLIC UTILITY TO THE LOCAL ELECTRICITY SUPPLY ENTITY UNDER THIS SECTION WILL NOT SUBJECT EITHER
29 CUSTOMERS IN TRANSITION OR THE OTHER DEFAULT SUPPLY CUSTOMERS OF A PUBLIC UTILITY TO HIGHER OR MORE
30 UNSTABLE DEFAULT SUPPLY SERVICE RATES OVER A 10-YEAR PLANNING PERIOD THAN WOULD OTHERWISE RESULT IF

1 THOSE DEFAULT SUPPLY CUSTOMERS HAD NOT BEEN TRANSFERRED TO THE LOCAL ELECTRICITY SUPPLY ENTITY.

2 (2) (A) UNLESS THE LOCAL ELECTRICITY SUPPLY ENTITY AND THE PUBLIC UTILITY OTHERWISE AGREE, A PLAN
3 FOR TRANSITION AND SERVICE ADOPTED BY THE LOCAL ELECTRICITY SUPPLY ENTITY IN ACCORDANCE WITH SUBSECTION
4 (1) MUST CONTAIN, AT MINIMUM, THE TERMS PROVIDED IN SUBSECTIONS (2)(B) AND (2)(C).

5 (B) THE TRANSITION OF THE PUBLIC UTILITY'S DEFAULT SUPPLY CUSTOMERS WITHIN THE LOCAL ELECTRICITY
6 SUPPLY ENTITY'S JURISDICTIONAL AREA TO THE LOCAL ELECTRICITY SUPPLY ENTITY MUST OCCUR IN FOUR EQUAL BLOCKS
7 OF CUSTOMERS SPREAD EQUALLY OVER A PERIOD OF 2 YEARS. ONCE THE PLAN FOR ORDERLY TRANSITION HAS
8 COMMENCED, ALL DEFAULT SUPPLY CUSTOMERS OF THE PUBLIC UTILITY WITHIN THE JURISDICTIONAL LIMITS OF THE LOCAL
9 ELECTRICITY SUPPLY ENTITY MUST BE TRANSFERRED TO THE LOCAL ELECTRICITY SUPPLY ENTITY.

10 (C) A CUSTOMER OF THE LOCAL ELECTRICITY SUPPLY ENTITY:

11 (I) THAT HAS AN INDIVIDUAL ACCOUNT WITH AN AVERAGE MONTHLY LOAD DEMAND OF LESS THAN 50 KILOWATTS
12 IN THE PREVIOUS CALENDAR YEAR IS ASSIGNED TO THE LOCAL ELECTRICITY SUPPLY ENTITY AS A DEFAULT SUPPLY
13 CUSTOMER AND MUST RECEIVE THE CUSTOMER'S ELECTRICITY SUPPLY FROM THE LOCAL ELECTRICITY SUPPLY ENTITY;
14 AND

15 (II) WITH AN ESTIMATED AVERAGE MONTHLY LOAD DEMAND OF 50 KILOWATTS OR GREATER BUT WITH AN
16 INDIVIDUAL AVERAGE MONTHLY LOAD DEMAND OF LESS THAN 5,000 KILOWATTS IN THE PREVIOUS CALENDAR YEAR FOR
17 THAT INDIVIDUAL LOAD MAY RECEIVE THE CUSTOMER'S ELECTRICITY SUPPLY FROM THE LOCAL ELECTRICITY SUPPLY ENTITY
18 AS A DEFAULT SUPPLY CUSTOMER.

19 (3) (A) IF THE LOCAL ELECTRICITY SUPPLY ENTITY'S PETITION MEETS THE REQUIREMENTS OF SUBSECTION (1),
20 THE COMMISSION SHALL ENTER AN ORDER APPROVING THE PETITION. ON THE DATE THAT THE COMMISSION ISSUES THE
21 ORDER APPROVING THE PETITION, THE LOCAL ELECTRICITY SUPPLY ENTITY IS THE DEFAULT SUPPLIER WITHIN ITS SERVICE
22 TERRITORY, SUBJECT TO THE TERMS OF THE PETITION.

23 (B) IF THE PETITION DOES NOT MEET THE REQUIREMENTS OF SUBSECTION (1), THE COMMISSION SHALL ENTER
24 AN ORDER THAT ESTABLISHES THE TERMS AND CONDITIONS NECESSARY FOR THE LOCAL ELECTRICITY SUPPLY ENTITY TO
25 SATISFY THE REQUIREMENTS OF SUBSECTION (1). ON THE DATE THAT THE COMMISSION'S ORDER BECOMES FINAL, THE
26 LOCAL ELECTRICITY SUPPLY ENTITY IS THE DEFAULT SUPPLIER WITHIN ITS SERVICE TERRITORY SUBJECT TO THE TERMS
27 OF THE ORDER UNLESS THE LOCAL ELECTRICITY SUPPLY ENTITY ELECTS, WITHIN 30 DAYS FROM THE TIME THE
28 COMMISSION ISSUES THE FINAL ORDER, TO WITHDRAW ITS PETITION.

29 (4) (A) AN ORDER OF THE COMMISSION UNDER SUBSECTION (3) MUST BE ISSUED WITHIN 180 DAYS OF THE
30 PETITION, UNLESS THAT PERIOD IS EXTENDED BY THE COMMISSION FOR GOOD CAUSE FOR ANOTHER 90 DAYS.

1 (B) IF THE COMMISSION HAS NOT TAKEN ACTION ON THE PETITION AT THE END OF THE PERIOD SPECIFIED IN
2 SUBSECTION (4)(A), THE PETITION IS CONSIDERED APPROVED AS FILED.

3 (5) A LOCAL ELECTRICITY SUPPLY ENTITY THAT HAS BEEN DESIGNATED AS A DEFAULT SUPPLIER PURSUANT TO
4 SUBSECTION (1) IS EXEMPT FROM THE PROVISIONS OF 69-8-419 THROUGH 69-8-421.

5
6 **NEW SECTION. Section 12. Local electricity supply entity powers.** (4) In addition to any powers
7 granted under law for a local government unit with self-government powers, a local electricity supply entity
8 defined in 69-8-103 may:

9 (a)(1) if designated by the commission as a default supplier pursuant to [section 11], provide default
10 supply services as provided in Title 69, chapter 8;

11 (b)(2) facilitate, plan, finance, site, construct, develop, acquire, own, rent, lease, upgrade, contract for,
12 dispose of, maintain, and operate a generation facility;

13 (c)(3) contract with public or private entities for the operation of generation facilities;

14 (d)(4) contract for legal, financial, engineering, and other professional services necessary to carry out
15 its functions;

16 (e)(5) enter into joint ventures with any public or private entity within or outside Montana for the purpose
17 of financing the construction of generation facilities;

18 (f)(6) establish and set rates, terms, and conditions for default supply services for certain customers
19 within its service territory;

20 (g)(7) receive by gift, grant, donation, or otherwise money, aid, or assistance from the United States,
21 the state of Montana, any political subdivision, or any other public or private entity; and

22 (h)(8) perform any other activities necessary to carry out its functions.

23 ~~—— (2) For purposes of this section, "generation facilities" means any combination of a generator or~~
24 ~~generators and other associated machinery and equipment that are normally operated to produce electricity,~~
25 ~~including associated transmission facilities.~~

26
27 **NEW SECTION. Section 13. Local electricity supply entity bonding.** (1) A local electricity supply
28 entity may:

29 (a) issue bonds from time to time at its discretion to finance the design, construction, or installation, in
30 whole or in part, of electrical generation and transmission facilities and all related and necessary equipment and

1 improvements to carry out its authorized purpose, to acquire electrical generation facilities or an interest in those
2 facilities, to finance the acquisition of electrical energy through a power purchase contract, to provide working
3 capital, to pay capitalized interest, to establish a debt service reserve, and to pay all other costs associated with
4 the sale, security, and issuance of the bonds; and

5 (b) issue refunding bonds for the payment or retirement of bonds previously issued by it.

6 (2) The bonds may not pledge the general credit of a consolidated city-county, a county, or an
7 incorporated city or town and must be made payable, as to both principal and interest, solely from the income,
8 proceeds, revenue, and funds of the local electricity supply entity derived from or held in connection with its
9 undertaking. Payment of the bonds, both as to principal and interest, may be further secured by any loan, grant,
10 or contribution from the federal government or any public or private source.

11 (3) Bonds issued under this section must be authorized by a resolution or ordinance of the governing
12 body of the local electricity supply entity.

13 (4) Any provision of any law to the contrary notwithstanding, any bonds issued under this section must
14 be fully negotiable. Bonds issued under the provisions of this section are declared to be issued for an essential
15 public and governmental purpose, and the interest on these bonds must be exempted from all state taxes.

16 (5) The bonds may be payable over a term not to exceed 40 years, may be issued pursuant to an
17 indenture of trust, and may be subject to other terms and conditions as may be agreed upon by the governing
18 body.

19 (6) The bonds may be sold at public or private sale at prices above or below par, subject to those terms
20 and conditions as approved by the governing body.

21 (7) The bonds may be further secured by the granting of a security interest on the financed facilities.

22 (8) In the case of a public official of a local electricity supply entity whose signature appears on any
23 bonds or coupons issued under this section and who is no longer in office before the delivery of these bonds,
24 the public official's signature is valid and sufficient for all purposes as if the official had remained in office until
25 the delivery of the bonds.

26
27 **NEW SECTION. Section 14. Codification instruction.** [Sections 11 through 13] are intended to be
28 codified as an integral part of Title 69, and the provisions of Title 69 apply to [sections 11 through 13].
29

30 **NEW SECTION. Section 15. Effective date.** [This act] is effective on passage and approval.

31 - END -